IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 284 OF 1998

Shri Balu Ganpat Davari &
Smt. Rambhabai Balu Davari .. Petitioners

Vs.

Nandlal Basudeo Mishra .. Respondent

Mr. Indrajeet Kulkarni for the Petitioners.
Mr. D.B. Sawant for Respondent.

CORAM : B.H. MARLAPALLE, J.

Date of Reserve : August 25, 2005.

Date of Pronouncement : October 21, 2005.

ORAL JUDGMENT:

1. This Civil Revision Application takes exception to the common Judgment and Order dated 16/1/1998 rendered by the learned Judge of the City Civil Court at Mumbai in S.C. Suit No.4035 of 1995 and S.C. Suit No.4495 of 1995 to the extent of the decree passed in the latter suit. In S.C. Suit No.4035 of 1995 (hereinafter referred to as "the first suit") the plaintiff had sought permanent injunction against the landlord (defendant no.1) from transferring the rent receipts and not to

interfere/disturb with the possession of the suit premises. Whereas, S.C. Suit No.4495 of 1995 (hereinafter referred to as "the second suit") came to be filed under Section 6 of the Specific Relief Act 1963 by the defendant no.3 in the first suit for restoration of the suit premises from which he was allegedly forcibly dispossessed on 3rd July 1995. In both the suits the suit premises is common i.e. Room No.11, Nanhkau Singh Chawl, Jigamata Nagar, Ambewadi, Dabholkar Adda, Bombay 400 033.

2. In the first suit the plaintiff claimed that she was tenant of the suit room and defendant no.1 was the landlord. She had intended to transfer the tenancy of the suit premises in favour of defendant no.2 i.e. Smt. Pramila Pandurang Lad and on the basis of the oral negotiations. Defendant nos.2 and 3 tried to take forcible possession of the suit premises and had filed an application under Section 145 of Cr.P.C. before the learned Metropolitan Magistrate at Mazgaon against the plaintiff, her husband and the landlord. They had also threatened her of dispossession on 24/6/1995. The defendant No.3 in the first suit is the plaintiff in the second suit and the

plaintiff in the first suit has been impleaded as defendant no.2 in the second suit along with her husband as defendant no.1. On the other hand the plaintiff int he second suit alleged that the defendants had illegally dispossessed him from the suit room on 3/7/1995 between 6.30 to 7.45 p.m. He claimed that he was inducted as a tenant by the landlord in the suit room on a monthly rent of Rs.30/- from June 1995. As per him, the defendant no.2 in the second suit (plaintiff in the first suit) was the tenant of the suit premises prior to May 1995 and since May 1995 one Pandurang Lad i.e. the husband of defendant no.2 in the first suit was inducted as the tenant and the said tenancy was surrendered by defendant no.1 in April 1995 on the basis of writing dated 16/8/1994. Prior to this transfer of tenancy the plaintiff in the first suit was residing on the mezzanine floor of the suit premises on compensation of Rs.300/- per month and there was one tailor carrying the business on the ground floor who was paying Rs.1000/- per month to the husband of the plaintiff in the first suit. The tailor vacated the premises in July 1994 and it came to be transferred to the husband of defendant no.2 in the first suit.

However, defendant no.2 and her husband decided to dispose of the premises for repayment of the loans they had borrowed and the plaintiff agreed to pay a consideration of Rs.95,000/- excluding the transfer fees of Rs.20,000/-. Thus, the defendant no.2 in the first suit and her husband had put the plaintiff in possession of the suit premises on 1/6/1995 with the consent of the landlord. He had put his lock on the suit premises and the defendants i.e. plaintiff in the first suit and her husband started threatening him of dispossession from 4/6/1995 onwards and ultimately they succeed to forcibly dispossess on 3/7/1995.

3. On appreciation of the evidence adduced by the respective parties and the arguments advanced by them, the trial court has held that the defendant no.2 in the first suit had proved that in part performance of contract by plaintiff, he had paid to the said plaintiff Rs.60,000/- and the landlord had agreed to transfer the tenancy in the name of defendant no.2. The trial court further held that the defendant no.3 in the first suit i.e. plaintiff in the second suit proved that by consent of defendant no.1 in the first suit in execution of the agreement between the

plaintiff and defendant no.2 he was put in possession of the suit premises from June 1995 and that the defendant no.2 in the first suit had proved that she was in possession of the mezzanine floor of the suit room since March 1994 as sub-tenant of the plaintiff in the first suit. The trial court further held that the plaintiff in the second suit proved that he was illegally and forcibly dispossessed from the suit premises three days after the institution of the first suit.

4. The plaintiff in the first suit was examined as D.W.1 and she stated that she had nothing to show in support of possession since 1988 except rent receipt. In her cross-examination she admitted that there was one tailor by name Ramesh for about one year and he left the suit premises somewhere in the year 1994-95. The landlord was examined as P.W.2 and he supported the plaintiff in the second suit. He also admitted that he had issued the rent receipts from June 1995 onwards in favour of the plaintiff in the second suit. The D.W.1 also agreed that she had received the consideration as written on 16/8/1994. The evidence of the plaintiff in the first suit did

not support her possession over the suit premises as on 3-7-1995 and on the other hand the possession of one tailor who is the husband of defendant no.2 was proved in respect of the mezzanine floor and he vacated the premises after August 1994. Inspite of opportunity having been granted to her in her cross-examination she failed to submit the documentary evidence like electricity bills, ration card, school leaving certificate of her children etc. As far as rent receipt relied upon by her is concerned, the trial court noted that the rent receipt book of the landlord was stolen by his son and that he was issuing bogus rent receipts. The defendant no.2 in the first suit was also examined and she admitted the transaction with the plaintiff in the second suit. She had agreed to transfer the tenancy for a consideration of Rs.1,15,000/- and she had received Rs.95,000/- whereas Rs.20,000/- were paid to the landlord so as to enable him to transfer the rent receipt. She also admitted that she had given possession of the suit room to the plaintiff in the second suit on 1/6/1995 and she was emphatic in saying that the possession of the entire suit premises were given on that day.

5. The trial court has scanned the evidence of all the witnesses carefully and recorded a finding that the plaintiff in the second suit was put in possession on 1/6/1995 of the suit room and the defendant no.2 in the first suit had handed over the suit premises to him pursuant to the transaction of Rs.1,15,000/- and with the consent of the landlord. The trial court also accepted the evidence of the plaintiff in the second suit that he was forcibly dispossessed by the plaintiff in the first suit and her husband from the suit premises on 3/7/1995 and this finding is duly supported by the evidence on record, including that of the P.W.2. The oral dispositions of the plaintiff in the second suit have been scrutinised by the trial court meticulously. The evidence of the four witnesses i.e. the plaintiffs in both the suits, the landlord and defendant no.2 in the first suit went to falsify the claim made by the plaintiff in the first suit that she was in possession of the suit room in May, June and July 1995. Her suit was rightly dismissed by the trial court. These findings of fact recorded by the trial court are supported by this evidence and, therefore, the decree

passed in the second suit does not suffer from any errors apparent on the face of the record. The plaintiff in the first suit came out with an utterly false claim which has been rightly dismissed by the trial court.

6. In the premises, the challenge to the decree passed in the second suit is devoid of merits and the findings recorded by the trial court in support of the said decree are based on the evidence that was adduced before the trial court. The revision, therefore, fails and the same is hereby dismissed. Rule discharged. Interim orders stand vacated. No order as to costs.

(B.H. Marlapalle,J.)